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IN THE
Supreme Court of the United States.

No. 708. October Term, 1946.

CLARK & CLARK, CHARLES L. MORRIS AND ROBERT BRINTON MORRIS, TRADING AS PROFESSIONAL LABORATORIES,

Petitioners,

v.

SMITH, KLINE & FRENCH LABORATORIES,
Respondent.

**BRIEF FOR RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI.**

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The printed record filed with the petition comprises, with respect to the transcript of testimony in the District Court, only the appendices to the briefs of the parties in the Circuit Court of Appeals. The testimony in the District Court was very extensive and the Circuit Court of Appeals found the appendices to be inadequate and stated that the original transcript of testimony had been read and carefully studied (R. 330, footnote 11). The record filed with the petition would appear to be inadequate.

The District Judge made extensive findings of fact and the Circuit Court of Appeals accepted them. The Lower Courts concurred in the findings of validity, infringement and unfair competition (*Goodyear Tire & Rubber Co., Inc. v. Ray-O-Vac Co.*, 321 U. S. 275).

There is not involved here any conflict with any applicable decision of this Court. There is no important question of Federal law which should be settled by this Court.

There is no departure from accepted and usual course of judicial proceedings or sanction of such a departure as to call for an exercise of this Court's power of supervision. The concurrent decisions of the Lower Courts are in consonance with the applicable decisions of this Court and the matter here is only one of private interest to the petitioners found guilty of unfair competition and of patent infringement.

STATEMENT OF THE CASE.

There are two salient facts in this case:

- (1) Both lower courts held the petitioners to be guilty of fraud; and
- (2) the invention is of the greatest merit.

With reference to the fraud, the petitioner Charles L. Morris was found to be the moving figure or force of the petitioners' business (R. 315, finding 86; R. 385). The District Court found the practices of the petitioners to be fraudulent (R. 316-317, findings 87-94). And the Circuit Court of Appeals characterized the petitioners' practices (R. 334, 335).

With reference to the invention, the District Court held:

" . . . what he disclosed is a new and useful composition of matter . . ." (R. 135),

" . . . he did not find a new use for an old, known composition, but for the first time he found the salt of a composition and the effects of it . . ." (R. 133),

" . . . It was here that Alles departed from the step by step testing of chemicals and by his experimentation struck the spark of genius when he discovered the therapeutic use which the effect of his compound would have upon the human central nervous system" (R. 133).

" . . . Its many uses have made it possible to cure ills and save life. It has opened up a new field of medicine . . ." (R. 129).

The Circuit Court of Appeals concurred and held:

"Alles' discovery is close to pioneer invention" (R. 331).

The petitioners' summary statement of matters involved is variously incorrect. The salts, the particular sulfate and the particular hydrochloride, of United States Patent No. 1,879,003 (R. 63) here involved are not common salts inasmuch as they were new with Alles. With reference to the base, the Lower Courts concurred that there was no disclosure of the salts (R. 298, finding 11; R. 330). With reference to the hydrochloride, the Circuit Court of Appeals (R. 331) did not reverse the District Court's finding that Jones and Wallis did not in fact disclose a salt of amphetamine (R. 299, finding 17).

With reference to the method of making the salts of the patent, the Patent Office rejection of Alles' method claims was based on generalization (R. 75) and the Circuit Court of Appeals concurred with the District Court's finding that the preparation of salts of amphetamine could not be described accurately as "kitchen chemistry" or be accomplished by way of mere routineering (R. 330).

There is no evidence whatever in the record that the physiological advantages and uses of Alles' salts were known. The Patent Office recognized invention in the production of the hydrochloride or sulfuric acid salt (R. 75). Nothing was known of them prior to Alles and certainly not their physiological advantages and uses, the discovery of which the District Court credited to Alles as striking the spark of genius (R. 133) and the Circuit Court of Appeals found to be close to pioneer invention (R. 331).

The reference in the patent specification to the utility is not vague, as petitioners claim, but, to the contrary, was held to be exact (R. 307, finding 45; R. 308, finding 50).

With reference to the disclaimer, it should be noted that the utility of amphetamine sulfate was well recognized in the original patent specification long before the filing of the disclaimer and long before the patent was purchased by the respondent (R. 298, finding 9).

The disclaimer speaks for itself. It added nothing to the original claim and did not change the invention. It specified characteristics inherently possessed and disclosed to be possessed by the salts disclosed by Alles and a field of utility; and gave to the claim, as both Lower Courts found, that limited interpretation to which it was entitled in view of the specification.

It is apparent that both the District Court and the Circuit Court of Appeals gave the most careful consideration to the disclaimer and to its effect. Both Lower Courts reached the same conclusion with respect to claim 1 in the light of the disclaimer as covering amphetamine sulfate, which both Courts held to be an infringement. Thus, the District Court concluded:

“The limitation or restriction of the disclaimer adds no new or additional element to the original claim of composition nor does it alter the original claim of composition so as to destroy its identity. The same invention is claimed” (R. 120).

And the Circuit Court of Appeals to exactly the same effect held:

“Disregarding asserted effects [the asserted effects are inherent in the new composition], we have treated Alles’ claim as preëmpting a composition of matter not known to the prior art, viz., amphetamine sulfate” (R. 331). (Bracketed matter inserted by us.)

The Lower Courts did not ignore the effects asserted by the disclaimer and the Circuit Court of Appeals, finding the claim as preëmpting a composition of matter not known to the prior art, found the statement of effects to be but a statement of usefulness (R. 331).

The record (R. 87) shows "we have licensed its manufacture for veterinary use only." There is no support here for petitioners' statement that purchasers from this licensee are restricted in the use which they can make of the product (petition, p. 5).

The grant of a license to manufacture for a certain use is not misuse of a patent. *General Talking Pictures Corporation v. Western Electric Company et al.*, 305 U. S. 124.

On the unfair competition phase, the Circuit Court of Appeals found that because of the fraud of the petitioners they should be required to distinguish their tablets made in imitation of respondent's tablets, i. e., the Lower Court, granting to the petitioners the right to use functional features of respondent's tablets, required petitioners to take reasonable steps to insure against continuance of their fraud.

The petitioners state that they never suggested that their tablets might be substituted for those of respondent, but the Circuit Court of Appeals held differently (R. 334, 335).

The petitioners' claim that to distinguish their tablets will involve expense, prevent competition and give to respondent a monopoly of functional features is ridiculous. The cost of the application of initials to tablets is trivial, inasmuch as such obviously merely requires a suitably engraved punch costing inconsequentially more than the plain punch which forms the bottom of the tablet.

It would seem that the petitioners here seek to have this Court license their fraud.

THE QUESTIONS PRESENTED BY THE PETITION.

The questions presented by the petition are not properly based upon the record in this case and the concurrent findings of the Lower Courts.

With reference to question 1, it is abundantly apparent that the Lower Courts did not ignore the disclaimer. To

the contrary, they gave it the most thorough consideration and concurred in their interpretation of its effect.

As to question No. 2, it is not shown that the claim of the original patent was so broad and indefinite as to be invalid and it is abundantly clear that the Lower Courts did not redraft the claim, but rather concurred in interpretation of the claim in view of the disclaimer as embracing that which the original claim when interpreted in the light of the specification would embrace, i. e., matter fully disclosed, of complete novelty and of such value as to warrant the Court of Appeals in finding it close to pioneer invention.

As to question No. 3, the record shows, and the District Court found that the process of making the Alles salts was neither kitchen chemistry nor to be accomplished by way of mere routineering. The Circuit Court of Appeals concurred in this finding by the District Court (R. 330).

Petitioners' question No. 4 fails to take into consideration the fraud involved in connection with petitioners' adoption of the functional features of the respondent's tablets.

As to Petitioners' question No. 5, the record does not show the patent owner here restricts the use which purchasers can make of the patented product. The record (R. 87) discloses a license to manufacture for veterinary use only.

PETITIONERS' REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

Petitioners do not advance any valid reason for the allowance of the writ here.

The Circuit Court of Appeals for the Third Circuit in deciding this case established no precedents in the field of chemical patent law and unfair competition, or otherwise. The Circuit Court of Appeals interpreted the disclaimer as not changing the invention of the original claim. The dis-

claimer was held not to be of the prohibited type under the latest decisions of this Court. The Circuit Court of Appeals found unfair competition because of fraud and provided reasonable and practical means for preventing it.

The concurrent findings of the Lower Courts here are in full consonance with the controlling decisions of this Court and not in conflict with decisions of the Circuit Court of Appeals for the Second Circuit on the same matters.

Of the several suits which petitioners list as having been brought by the respondent, all with the exception of Nos. 3 and 7 have terminated by discontinuance or the entry of consent judgments.

What petitioners mean by their statement, petition, p. 8, that respondent has procured, by one means or another, consent decrees in some of these cases, is not clear to us. Presumably they would suggest, by innuendo, that respondent proceeded to obtain consent decrees by some devious means. There is no foundation for any such innuendo. The bringing of the suits was fully warranted, as was variously their dismissal and termination by consent judgments.

The respondent has not threatened and intimidated anyone. The petitioners raised this complaint in the District Court with respect to notices sent out by the respondent to infringers of its patent. The District Court found respondent's notices to be within the limits of good faith allowed one who seeks to protect his patent rights (R. 177-180) and dismissed petitioners' counterclaim (R. 177-182).

SUMMARY OF ARGUMENT.

The Lower Courts did not ignore the disclaimer. The disclaimer is not improper or invalid under the decision of this Court in *Altoona Publix Theatres, Inc. v. American Tri-Ergon Corp.*, 294 U. S. 477. The Lower Courts held that the disclaimer did not change the invention and interpreted it as defining the scope of usefulness or effect of a new composition.

The disclaimer was interpreted by the Lower Courts as bringing to the claim that interpretation to which it was entitled in the light of the specification. The effects defined by the disclaimer were inherent in the new composition and were exactly defined in the specification, as was the field of utility.

The Lower Courts did not read anything from the specification into the claim to change the invention. The specification and disclaimer were interpreted as defining inherent characteristics and field of utility or the scope of usefulness of the composition.

The Lower Courts interpreted the claim in the light of the disclaimer as preëmpting amphetamine sulfate, a new composition of matter having characteristics or effects in the field of utility or scope of usefulness defined by the disclaimer. The claim was not rewritten.

General Electric Co. v. Jewel Incandescent Lamp Co., 326 U. S. 242, does not apply in that the Lower Courts found that the method of producing the new composition of matter was not "kitchen chemistry" or mere routinering (R. 330). The decision in that case turned on the holding that a finding of added utility did not involve invention. Here there is no finding of added utility. The invention held by the Circuit Court of Appeals to be almost pioneer involved the finding of a new composition of matter which had great, unexpected and unique utility.

In *General Electric Co. v. Save Sales Co., et al.*, 82 Fed. (2d) 100, the Circuit Court of Appeals for the Sixth Circuit (p. 102) considered a patent for a product and,

noting that method claims originally included in the application had been rejected by the Patent Office, held (p. 103):

"a new article of commerce may involve the exercise of the inventive faculty even though in producing it a known method is resorted to."

Here it is to be noted that the Lower Courts concurrently held that the method of producing the Alles salts was not known.

Warner & Co. v. Lilly & Co., 265 U. S. 526, is full authority for the decision of the Circuit Court of Appeals on the unfair competition phase here and was followed by the Circuit Court of Appeals.

Kellogg Co. v. National Biscuit Co., 305 U. S. 111, turned upon a quite different state of fact from that involved here. Defendant's pillow shaped biscuit was dissimilar to the original pillow shaped biscuit. There appears to have been no fraud or misrepresentation as in the *Warner* case. The defendant's biscuits were in overwhelming proportion sold in the original packages, bearing the defendant's name, in distinction from the case here where the petitioners' imitation tablets are dispensed by the druggists in naked form apart from the original package and without other than their appearance to identify them.

Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U. S. 502, and *Boston Stores of Chicago v. American Graphophone Co.*, 246 U. S. 8, do not apply. The record shows the grant of a license to manufacture for use in veterinary medicine, not a sale with a restriction upon use or resale price, as in the cited cases.

The propriety of the license of record here was upheld by this Court in *General Talking Pictures Corporation v. Western Electric Co., et al.* (1938), 305 U. S. 124.

ARGUMENT.**Petitioners' Point I.**

In *Altoona Publix Theatres, Inc. v. American Tri-Ergon Corp.*, 294 U. S. 477, the Court affirms (p. 490) the validity of a disclaimer the effect of which is to restrict or curtail the monopoly of a patent; and lays down the rule that the statute does not permit the addition of a new element to a claim whereby a patent for an original combination is transformed into a new and different combination.

In *Altoona Publix Theatres, Inc. v. American Tri-Ergon Corp.* the disclaimer added an element, a flywheel, to the combination of the original claim and thus presented a new combination.

In the case at bar the disclaimer did not add any new element. It did not transform the claim from a claim for one thing to a claim for another. It only had the effect of stating characteristics of new compositions within the original claim and a field of usefulness therefor. As the disclaimer affected the original claim as preëmpting amphetamine sulfate, its effect was at most limiting.

In a mechanical combination claim such as was involved in *Altoona Publix Theatres v. Tri-Ergon Corp.* a disclaimer which did not disclaim a claim in its entirety could hardly do other than add or subtract an element to or from the originally claimed combination, thus presenting a new combination. In the case at bar in distinction, as the Lower Courts concurrently found, the disclaimer added nothing to the claim and operated as an interpretation in the light of the specification, having at most a limiting effect. Giving the disclaimer the effect of preëmpting amphetamine sulfate, which was the only composition before the Lower Courts, there can be no question but that such is limiting without change of the invention. This amounts to an interpretation of the claim in the light of

the specification as embracing, to the extent that the original claim might be *literally* broader, only that which is truly and justly the inventor's own.

Petitioners' Point II.

The petitioners' point II is made upon the assumption that the Circuit Court of Appeals disregarded the disclaimer, which is clearly not the case, and that it then had before it a claim which covered the prior art.

The record in the case at bar wholly fails to support the contention that the subject-matter of the original claim was in the prior art and, to the contrary, the Lower Courts concurrently held that Alles invented a new composition of matter.

The statement in the disclaimer that the original claims were too broad is in no way inconsistent with the concurrent findings of the Lower Courts. Thus, standing by itself the claim was literally broader than the invention disclosed by the specification. Interpreted in the light of the specification, the claim was coextensive with the claim in the light of the disclaimer and so the Lower Courts concurrently held.

In considering the disclaimer here the Lower Courts did not revive the original claim—literally a naked claim for a composition—but very clearly gave effect to the disclaimer as giving to the claim that interpretation to which it was entitled in the light of the specification.

There is no conflict between the decision of the Circuit Court of Appeals for the Second Circuit in *Foxboro Co. v. Taylor Instrument Companies*, 70 USPQ 338, and that below in the case at bar. In the case at bar the patentee did not claim broadly and then recede as he found that prior art unknown to him had limited his invention. From the record in the case at bar, it is clear that the prior art does not limit the invention. The field of the invention involves new and previously unknown compositions of matter having the greatest merit. The making of the invention was

found by the District Court *supra* to strike the spark of genius, and by the Circuit Court of Appeals *supra* to be almost pioneer.

Petitioners' Point III.

The petitioner seems to rely here not upon the conclusion of the Circuit Court of Appeals, but upon its discussion on the way to its conclusion. Even assuming that it is difficult to evaluate the patent or to determine the impact of the disclaimer on the claims, it is clear that Alles does not, in his specification or by his disclaimer, claim effects. He claims compounds having certain effects, the compounds being new.

Alles' claim 1 does not specify any particular salt of amphetamine in words, but, interpreted in the light of the disclaimer, was properly held to preëmpt amphetamine sulfate.

The Circuit Court of Appeals observed that some salts of amphetamine will not have the desired effect and reasoned that since effects may not be claimed, not even experimentation would serve to designate the salts which Alles claimed; and concluded that if there was no alternative construction, Alles claimed all salts without regard to their effects, but pointed out that such conclusion seemed absurd in the light of the specification which showed that Alles laid great store on his discovery that amphetamine salts, particularly the hydrochloride and sulfate, have effects like those of the salts of ephedrine (R. 328).

With reference to the Circuit Court of Appeals' statement that not even experimentation would serve to designate the salts which Alles has claimed, it is but an observation later indicated by the Court as leading to a conclusion which the Court stated to be absurd.

On this point the petitioners segregate from context statements of the Circuit Court of Appeals, stated by that Court to lead to absurd conclusions or discarded in reaching its ultimate conclusion of the effect of the disclaimer.

Petitioners' Point IV.

The Circuit Court of Appeals here did not sustain a claim to a compound the method of manufacturing which was well known. As pointed out *supra*, the Circuit Court of Appeals, in concurrence with the District Court, found that the method of manufacture was not known (R. 330). The rejection by the Patent Office of process claims of Alles involves no estoppel. In *General Electric Co. v. Save Sales Co., et al.*, *supra*, a claim of estoppel was made based upon rejection of a number of process claims, but the Circuit Court of Appeals for the Seventh Circuit held (p. 62), that a new article of commerce may involve the exercise of the inventive faculty even though in producing it a known method is resorted to.

In fact, the rejection by the Patent Office of Alles' process claims was wholly general (R. 75). Alles, deeming himself sufficiently protected by the product claims, pursued the process claims no further but such does not change the fact that, as found below, the process of making Alles' particular salts was not known. It is to be noted that while the entire file wrapper of the Alles application is in evidence as Defendants' Exhibit XXIV, only excerpts appear in the record here.

In *General Electric Co. v. Jewel Incandescent Lamp Co.*, *supra*, the method of manufacture of the particular article, i. e., the electric bulb of the patent in suit, was known. In that case the holding was that discovery of additional advantages of a product made by a known process was not invention. Here there is no showing in the Patent Office record that the method of making the particular Alles salts as compared with salts generally was known, and the Circuit Court of Appeals concurred in the holding that the method of making the particular salts of Alles was not known.

Petitioners' Point V.

Petitioners fail to present the essential point involved in the Circuit Court of Appeals' holding with respect to unfair competition.

The vice in petitioners' position, as found by the Circuit Court of Appeals (R. 334, 335) is that they sought by unfair methods to avail themselves of the favorable reputation which respondent had established for its amphetamine sulfate tablets.

That at least some of their salesmen suggested that prescriptions for SKF's Benzedrine sulfate, widely known and advertised as its brand of amphetamine sulfate, might be filled without danger of detection by the defendants' brand of amphetamine sulfate; that the bringing to the mind of the druggist by petitioners' salesmen pointing out the identity of the two preparations and the enhanced profit to be made by selling the former in lieu of the latter; and that other unfair practices existed; were picked out by the Circuit Court of Appeals as being typical of petitioners' unfair practices (R. 334-335).

The false statement of Charles L. Morris that Clark was the sole purveyor of amphetamine sulfate was held by the Circuit Court of Appeals to be sufficient to destroy Morris' credibility (R. 335).

The Circuit Court of Appeals, in its holding on the unfair competition phase, followed exactly the rule of *Warner & Co. v. Lilly & Co., supra*, and required only that the petitioners reasonably distinguish their tablets from respondent's by applying their initials thereto.

To argue that the cost of applying initials to the tablets would affect competition is absurd, since the application of initials merely requires an engraved punch as compared with a plain punch. The application of initials to the tablets is wholly practical and will not prevent sale of the tablets. It is to be noted that the Court of Appeals did not, as petitioners represent, say that "doctors will not prescribe a tablet which bears a mark indicating that it is

a patent medicine." What the Court said was (R. 333, footnote 15): ". . . some members of the medical profession desire to cause their patients to believe that prescriptions are being specially prepared for them. . . ." There is no basis for concluding that a sufficient number of doctors so feel as to make the application of initials unreasonable, nor is there any reason to facilitate this minor form of misrepresentation by some doctors.

Petitioners' labels on their bottles sold to the retailer are wholly insufficient to prevent the fraud, since the retailer dispenses the petitioners' tablets in naked form and, as found by the Circuit Court of Appeals, petitioners suggest and promote the substitution of petitioners' tablets for respondent's—and obviously will continue to do so, or, even if they do not, the habit of substitution of petitioners' tablets for respondent's having been formed, substitution will continue, unless petitioners' tablets be distinguished from respondent's tablets.

The decision of the Circuit Court of Appeals on the unfair competition phase is exactly in line with the decision of this Court in *Warner & Co. v. Lilly & Co., supra*. This Court held (p. 532):

"But respondent being entitled to relief, is entitled to effective relief; and any doubt in respect of the extent thereof must be resolved in its favor as the innocent producer and against the petitioner, which has shown by its conduct that it is not to be trusted."

The above conclusion of this Court exactly fits the case at bar.

In *Warner v. Lilly* the Court required the petitioner to put a notice on its labels to the effect that its preparation was not to be sold or dispensed as respondent's, or be used in filling prescriptions or orders calling for respondent's preparation.

In *Warner v. Lilly* it is to be noted that the preparations involved were liquid. It is impossible to so mark a

liquid as to distinguish it from another liquid. In the case at bar the products are tablets and it is quite obviously practical to apply initials to tablets without material expense. Petitioners' contention here is out of line with Morris' testimony (R. 229).

Here, as in *Warner v. Lilly*, the respondent is entitled to effective relief and any doubt as to the extent thereof must be resolved in respondent's favor, since here it has been abundantly demonstrated and found by the Lower Courts that the petitioners are not to be trusted.

The only effective relief which petitioners can have here is to have the tablets distinguished and the most practical way of accomplishing the distinction is for the petitioners to prominently initial their tablets so that they will be recognized as petitioners' tablets and rendered *per se* non-confusable and non-substitutable for respondent's tablets.

The case of *Kellogg Co. v. National Biscuit Co.*, 305 U. S. 111, which, incidentally, came to this Court from the Third Circuit, is not at all in point and does not conflict with or change the rule of *Warner v. Lilly, supra*.

In the *Kellogg* case this Court found, p. 122, that "there is no evidence of passing off or deception on the part of the Kellogg Company." Again, p. 121, the Court held:

"but no person familiar with plaintiff's product would be misled."

In the *Kellogg* case not only were the Kellogg labels distinctive, but the Court found that relatively few biscuits would be removed from the original cartons before they reached the consumer (p. 121) and the Court further found (p. 121):

"the Kellogg biscuit is about two-thirds the size of plaintiff's; and differs from it in appearance."

Finally, the Court found (p. 121):

"To put upon the individual biscuit some mark which would identify it as the Kellogg product is not commercially possible."

The distinction between the case at bar and the *Kellogg* case is obvious, as is the consonance of the decision of the Circuit Court of Appeals here with the decision of this Court in *Warner v. Lilly, supra*.

We believe that the Circuit Court of Appeals and this Court have held that where features of the product are functional, others may use such features, but we cannot find that any Court has authorized the use of functional features in a fraudulent manner. Where functional features are used in a fraudulent manner, the Circuit Court of Appeals and this Court in consonance have required the fraudulent user to reasonably and practicably distinguish from the innocent user. The direction of the Circuit Court of Appeals in the case at bar is wholly reasonable and practicable.

Petitioners' Point VI.

The license granted by respondent (R. 87) does not constitute a misuse of the patent.

Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U. S. 502, and *Boston Stores of Chicago v. American Graphophone Co.*, 246 U. S. 8, do not condemn the grant of a license to manufacture for a certain field of use. These cases are authority for the rule that when a patented product is sold, the patent monopoly on it disappears and the purchaser can do with it as he pleases.

Here the record (R. 87) shows a license to manufacture for a certain field.

Mercoid Corp. v. Mid-Continent Investment Co., 320 U. S. 661, is not at all in point. In that case the patent was used to monopolize an unpatented product. There is no such use of the patent here.

The license here is entirely within the reward which the patentee is entitled to secure by the grant of the patent (*United States v. General Electric Co.*, 272 U. S. 476, 489, approved by this Court in *General Talking Pictures Corporation v. Western Electric Co., et al.*, 305 U. S. 124).

In *General Talking Pictures Corporation v. Western Electric Co., supra*, a license to manufacture amplifiers only for radio amateur reception, radio experimental reception and radio broadcast reception was approved by this Court.

It is clear, we believe, that the license (R. 87) does not involve any misuse by respondent of its patent.

CONCLUSION.

We submit that the concurrent decisions of the Lower Courts on both the patent and unfair competition phases of the case at bar are in full consonance with the law and the decisions of this Court and involve no conflict with the decisions of the Circuit Court of Appeals for the Second Circuit or of other Circuit Courts of Appeals.

We submit that no question is involved in the case at bar warranting the granting of the petition and that the petition should be denied.

Respectfully submitted,

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